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In the Supreme Court of the United States

October Term 1970

No. 597

Jerome Joy, et al.,

Appellants,

vs.

City of St. Louis, Missouri, et al.,

Appellees.

On Appeal from the United States District Court
For the Eastern District of Missouri

BRIEF OF THE STATE OF IDAHO AS AMICUS CURIAE

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SUBJECT INDEX

Page

Interest of Amicus 1

Summary of Argument 3

Argument

I. In the Administration of Unemployment Insurance By The States Procedural Due Process Does Not Require That A Pre-Termination Evidentiary Hearing Be Held Before Benefits Are Terminated 5

A. Are Unemployment Insurance Benefits Property as Contemplated By the Due Process Clause of The Fourteenth Amendment? 5

B. When Do Unemployment Benefits Become the Property of Claimant? 10

C. A Pre-Termination Hearing Is Not Required In Unemployment Insurance Administration Because The Element of "Brutal Need" Is Not Present 15

II. The Principle Announced in Goldberg v. Kelly, 397 U.S. 254 (1970) Does Not Apply to Unemployment Insurance 17

A. The Facts of the Goldberg Case are Distinguishable From Those Involved In Unemployment Insurance Administration 17

B. Whereas, Need Is the Sine Qua Non of Welfare Eligibility, It Is Not Even A Consideration In the Determination To Pay Unemployment Insurance Benefits 19

III. It Is Within The Power Of This Court And A Duty Imposed Upon It To Construe A Statute So As To Avoid The Danger Of Its Unconstitutionality 20

Conclusion 21

TABLE OF AUTHORITIES CITED

CASES **Page**

Application of Stone, 77 Wyo. 1 (1957) 9

Burroughs v. Employment Security Agency,
86 Idaho 412, (1963) 18

Citizens National Trust & Savings Bank of Los Angeles v. Brown,
54 Cal. App. 2d 688 (1942) 11

Communications Association v. Doude,
339 U.S. 382, 407 (1950) 20

Dandridge v. Williams, 397 U.S. 471, 480, 481 (1970) 20

Forbes Pioneer Boat Line v. Board of Commissioners of
Everglades Drainage District, 258 U.S. 338 (1922) 7

Goldberg v. Kelly, 397 U.S. 254 (1970) 2, 3, 4, 15, 16, 17

Hibben v. Smith, 191 U.S. 310 (1903) 7

Hughes v. Kansas City Motion Picture Machine Operators,
282 Mo. 304 (1920) 9

Java, et al, v. California Department of Human Resources
Development, et al, Case No. C-69 350 ACW 1, 2

Juster Brothers v. Christgau, 214 Minn. 108 (1943) 9

Kelly v. Wyman, 294 F.Supp. 893, 899, 900 (1968) 15

Labor Board v. Jones and Laughlin, 301 U.S. 1, 30 (1937) 20

McPherson v. Blacker, 146 U.S. 1 (1892) 7

Opp Cotton Mills v. The Administrator of Wage and Hour Division,
312 U.S. 126 (1941) 13

United States v. Northern Pacific Railroad Co.,
256 U.S. 251 (1921) 14

Whitman v. National Bank, 176 U.S. 559 (1900) 7

Wright v. United States, 302 U.S. 583 (1938) 7

STATUTES

Page

42 U.S.C. Section 503 (a)(1) 2, 5, 10, 15

California Unemployment Insurance Code, Section 1335 1

Fourteenth Amendment U. S. Constitution 2, 3, 5, 7, 10

Fifth Amendment U. S. Constitution 7

11 Am. Jur. Constitutional Law, Section 61 7

Idaho Code

- Section 72-1333 (b) 2
- Section 72-1350 12
- Section 72-1351 12
- Section 72-1361 16
- Section 72-1366 14
- Section 72-1368 (j) 16

OTHER AUTHORITIES

Hearings on S. 1130 Before the Senate Committee on Finance, 74th Congress, 1st Session at 602, 623 (1935) 11

Van Alstyne, The Demise of the Right Privilege Distinction in Constitutional Law, 81 Harv. L.R. 1439 (1968) 7, 10

Regulations, Article III, Paragraph 5 2

In the Supreme Court of the United States

OCTOBER TERM 1970

No. 507

JUDITH JAVA, et al.,
Appellees,

vs.

CALIFORNIA DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT, et al.,
Appellants.

On Appeal From the United States District Court
For the Northern District of California

BRIEF OF THE STATE OF IDAHO AS AMICUS CURIAE

INTEREST OF AMICUS

On May 14, 1970, the United States District Court for the Northern District of California in the case of *Judith Java, et al, vs. California Department of Human Resources Development, et al,* Case No. C-69 350 ACW, entered its interlocutory judgment preliminarily enjoining the defendants from enforcing that part of California Unemployment Insurance Code Section 1335 which provides that "(i)f an appeal is filed, benefits with respect to the period prior to the final decision on the appeal shall be paid only after such decision." The Court further ordered the

defendants not to suspend unemployment benefits due plaintiffs and members of their class on the ground that an eligibility determination has been appealed except after a prior hearing in accordance with the principles enunciated in *Goldberg v. Kelly*, 397 U.S. 254 (1970).

The rationale of the Court was to the effect that the facts in the *Java* case were indistinguishable from those of the *Goldberg* case and that when this fact is considered, together with the "payment when due" directive of Section 503 (a)(1) of Title 42, U.S.C., the Social Security Act of 1935, as amended, which, according to the Court, was an indication of legislative intent to aid the unemployed when they need it most and was also a "reiteration of the classic due process standard, i.e. when a person has been found entitled to a government benefit, this benefit in most cases cannot be taken away without certain pre-termination procedures being followed," the inevitable result is that the procedure employed by defendants violates both the Federal statute and the Constitution.

Pursuant to the authority conferred upon it by Section 72-1368 (j), Idaho Code, and by Regulations adopted by the Executive Director of the Department of Employment pursuant to the authority conferred upon him by Section 72-1333 (b), Idaho Code, and more particularly Regulations, Article III, paragraph 5, *amicus* applies its Employment Security Law substantially as do the defendants in the *Java* case. *Amicus* asserts that these procedures do not violate either the Due Process Clause of the Fourteenth Amendment or the applicable provisions of the Social Security Act. If this Court is to affirm the decision rendered by the District Court below, said decision would by innuendo require *amicus* to reinterpret and apply its law in accordance with the decision in said case and *amicus*

believes said interpretation would be contrary to law and contrary to the best interest of all parties concerned. *Amicus* therefore respectfully petitions this Court to reverse said District Court decision.

SUMMARY OF ARGUMENT

The District Court incorrectly interpreted the *Goldberg* case as proclaiming that due process in unemployment insurance cases prohibits the state, once it has in any way ruled claimants eligible for unemployment insurance benefits, from terminating said benefits before granting to the claimant a pre-termination evidentiary hearing. The Court erred because it ruled that due process compelled this decision when the Court weighed and balanced the state's interest in protecting public funds against the interest of the disaster-stricken claimant in having the necessities of life while the bureaucracy mulls over his continued eligibility. Actually, what the Constitution provides is that no state shall deprive a person of his property without due process of law. The proper question to ask therefore is whether the process by which the state takes a person's constitutionally protected property amounts to "due process." The questions to be asked in an unemployment insurance case then are: (1) Are unemployment insurance benefits the property of claimant as contemplated by the Fourteenth Amendment? (2) If so, when do they become constitutionally protected property? (3) And finally, if they are constitutional property, was claimant deprived of said property without due process of law, i.e., without the opportunity to be heard at a meaningful time and in a meaningful manner, in a hearing tailored to the capacities and circumstances of those who are to be heard, and during which he was allowed to confront and cross-examine adverse witnesses, with the aid of counsel if he so desired, and a decision at the end of such hearing as

to claimant's eligibility for unemployment compensation which rested solely on the legal rules and evidence adduced at the hearing, all of which occurred before the state finally deprived him of his property?

The conclusion reached by the District Court that the payment of unemployment insurance is indistinguishable from the payment of public welfare as in the *Goldberg* case is contrary to both the law and the facts. Whereas the need of the claimant is the sine qua non of welfare entitlement, it was expressly rejected as one of the eligibility conditions of unemployment insurance, thus making available to the eligible, whether rich or poor, needy or not, the benefits of unemployment insurance. In fact, the longer a claimant was employed prior to his unemployment and the greater his income, the greater are his unemployment benefit payments and the longer do they last; the lower the income while working and the shorter the duration of said employment, hence, presumably the greater the need for benefits, the less does claimant actually receive, and all this is accomplished by express provisions of the Employment Security Law.

The Court below erred in asserting that the "payment when due" directive of the Social Security Act evinces a congressional intent to help the jobless when they need it most. It evinces an intent to pay them when they are entitled to it and not before. In fact, a claimant's most acute need is not normally when he first files for benefits, which is usually only a day or so after termination of employment when he still has money from his last pay check, but later on after he has exhausted said funds. However, in any event, need is not one of the conditions that makes unemployment benefits "due."

The Court in concluding that the "payment when due" provision constitutes a reiteration of "the classic due process

standard" that once a benefit claimant has been declared eligible for unemployment insurance payments, the benefits cannot be taken away or withheld without a pre-termination evidentiary hearing, erred not only as to when payment is due but more importantly as to what the classic due process standard really is.

The ruling below that once a claimant has been ruled eligible for benefits in an initial interview at which the interested employer or employers are not present and that if then the last employer or the chargeable employer, which are very often not the same employer, appeals the "determination" of eligibility, a procedure that suspends payment of benefits until the employer's appeal is heard and decided, deprives claimant of the due process guaranteed him by the Fourteenth Amendment and is not calculated to insure full payment of unemployment insurance benefits when due as required by Section 503 (a) (1) of Title 42, U.S.C., is in error.

ARGUMENT

I. In The Administration Of Unemployment Insurance By The States Procedural Due Process Does Not Require That A Pre-Termination Evidentiary Hearing Be Held Before Benefits Are Terminated.

A. ARE UNEMPLOYMENT INSURANCE BENEFITS PROPERTY AS CONTEMPLATED BY THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT?

All of us are to a certain extent at least products of our time. We are a people caught up in a neoteristic love of change. Ours is a revolutionary time in which change is constant and

pervasive and any idea, principle, life style, program, institution or standard which is more than a few minutes old is suspect. We speak of the freedom and dignity of the individual while at the same time attributing all of man's problems to the forces produced by our industrialized-urbanized society and the bigness of government, all of which problems are therefore beyond the control of individual man. Only the collective can adequately deal with these problems which will largely be solved by the economic, political, social and educational leveling of society. Thus the solution seems to rest in a welfare state wherein the state assumes the primary responsibility for the economic and social welfare of its individual citizens. The welfare state is accomplished by taking from the haves and giving to the have nots. This is the constant theme of the arts, the news media and academe. It seems also to be the trend of judicial decisions throughout the nation.

Thus America's past is called into question and it is alleged that the prejudice and tradition of the past are all that stand in the way of achieving this as yet undefined secular social utopia envisioned by its advocates. Yet the people adopting the constitution had made it clear that they did not believe that the source of rights or privileges was either the government or the constitution, but that they were inherent in and an inalienable part of man. They had enumerated in the constitution the purposes for which government could act and consequently for which private property could be taken for a public purpose and then taken only according to due process of law. Those people had experienced unlimited government and chose to have it no longer. They recognized that if the government has the power to confer rights or property it has the power to take them away. This, they expressly denied to government and said further any property we possess you cannot take from us without due process of law.

There have been in the past strict constructions of even the due process clause and he courts have seen it necessary to reinterpret this constitutional limitation in light of changing conditions.[1] However, the very essence of constitutional government is tnat it recognizes that the source of all personal rights is not the government but rather they are inherent in the people who create the constitution. Thus the purpose of writing a constitution is to expressly limit the government it creates. An independent judiciary is charged with interpreting governmental action to see whether it complies with these limitations, and if the branch of government which limits all other branches is not limited itself, then it is meaningless to speak of a government as constitutional.

This Court has held that the fundamental purpose of constitutional construction is to give effect to the intent of the framers of the constitution and the people adopting it, *Whitman v. National Bank,* 176 U.S. 559, (1900), and that the courts are not at liberty to disregard the plain meaning of the words of a constitution in order to search for some other conjectured intent, *McPherson v. Blacker,* 146 U.S. 1 (1892), thus the words in a constitution are used according to their plain, natural and usual signification and import, *Wright v. United States,* 302 U.S. 583, (1938), and in interpreting the constitution the Court should not go against the literal meaning thereof, *Forbes Pioneer Boat Line vs. Board of Commissioners of Everglades Drainage District,* 258 U.S. 338, (1922). The same meaning and intent are ordinarily given to the due process guarantee in both the Fifth and Fourteenth Amendments, *Hibben v. Smith,* 191 U.S. 310 (1903). See *11 Am. Jur., Constitutional Law, Section 61.*

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1. *Van Alstyne, The Demise of the Right-Privilege Distinction in Constitutional Law,* 81 Harv. L.R. 1439 (1968).

Recent decisions of this Court have established an economic needs test as the overpowering fact which controls in the question of whether procedural due process requires a pre-termination hearing before government largesse is suspended or discontinued or whether a post-termination hearing will suffice, which test so far has always been resolved against the government and in favor of those in "brutal need," asserting that to cut off such benefits in the face of such brutal need is to deprive the recipients of the very means of survival while the state labors to make a decision it has already resolved in favor of the recipient, and such action is unconscionable. The decisions thus say that even a temporary delay in turning said welfare benefits over to an eligible claimant violates due process. However, we are not given any guidelines as to how long the delay can be, if any at all, before it becomes unconscionable. These decisions offer as the only solution to the cases where such procedure results in improper payment of benefits that the people expend more funds to collect what was illegally paid or to improve and speed up procedures to prevent such incorrect payment. Thus, in addition to the requirement that the taxpayers have extracted from them the initial tax to pay the benefits in question, they are rewarded for their efforts by being asked to pay in more to recover payments which should never have been made in the first place, all in order to prevent a delay to those in need. This is, in effect, to tell Idaho that when it discovers a claimant who is receiving unemployment insurance benefits while on a skiing vacation in France that it must somehow notify the vacationing recipient of its intention to stop said payments and to give him a reasonable opportunity to appear and contest said termination prior to actual termination of benefits. Certainly, the Court would not say that the need was so "brutal" in such a case that the termination prior to a hearing was unconscionable.

Perhaps such results come about because we talk of government as though it provided all the money when, in fact, of course the people do. In our system, the government has no funds it generates on its own, it can give to some only after it has taken from others. It does not hurt us to remind ourselves on occasion that the government gets its income from the people and from the people only. If we let ourselves forget this truth and think of some governmental entity as the source, we can be led into error's gloomy way. The question is not resolved in terms of government vs. people, but only in terms of what one citizen has a right to demand from other citizens. The right of due process like any other right guaranteed by the constitution is not to be enjoyed without limitation or reference to the rights of others, *Hughes vs. Kansas City Motion Picture Machine Operators,* 282 Mo. 304 (1920), cert. denied, 254 U.S. 632; *Application of Stone,* 77 Wyo. 1 (1957), cert. denied, 352 U.S. 1026. Certainly, in unemployment insurance matters, the employer is an interested party and must be afforded the same due process rights as the claimant, *Juster Bros. vs. Christgau,* 214 Minn. 108, (1943).

Is it too much to assume that procedural due process is primarily concerned with the adequacy of the procedures involved in taking property and not the relative merits of conflicting claims? The needs of the parties involved may be a proper element of concern as to whether the procedure involved meets due process standards but that such need is to be determinative of the issue of pre-termination vs. post-termination hearings is to disregard the plain meaning of the words of a constitution in order to search for some other conjectured intent.

B. WHEN DO UNEMPLOYMENT BENEFITS BECOME THE PROPERTY OF CLAIMANT?

Whereas in the past there seems to have been considerable question as to whether government largesse is property as contemplated by the due process clause, the doubt allegedly has been removed for us today.[2] But if it is actually and irrevocably too late in the day to raise the objection that unemployment insurance, along with other government largesse, is not really constitutional property subject to the due process clause, perhaps it is not too late to ask the question: At what point does unemployment insurance become the property of a claimant? If one assumes that unemployment insurance is, in fact, property as contemplated by the due process clause of the Fourteenth Amendment, the Court below correctly concluded that the law is that said benefits become the property of claimant when due. But it incorrectly concluded that the benefits become due in the case of unemployment insurance when there is the initial finding made by the state that the claimant presumably is entitled to benefits based upon an interview at which claimant alone is present and at which time the claimant's version of the cause for his unemployment is given, but at which interview the employer is not present or given a chance to tell his version of the separation from employment or to confront or cross examine witnesses, or to rebut information given by the claimant.

The Social Security Act, Section 503 (a)(1), Title 42, U.S.C., requires that before the Secretary of Labor can find a state law to be consistent with Federal standards, the state statute must be "reasonably calculated to insure full payment... when due." Thus, the state laws presently in effect in the

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2. *Van Alstyne, The Demise of the Right-Privilege Distinction in Constitutional Law,* ante.

country have been approved by the Secretary of Labor and said statutes include the provisions for pre-termination procedures such as those at issue herein. Model statutes prepared by a Presidential Commission at the time of the enactment of the Social Security Law proposed model statutes to be used by the states in drafting their laws. The hearings conducted by the Senate Committee on Finance reflect the fact that such model statutes included the language permitting the termination of benefits prior to hearing similar to those contained in the state laws which are at issue herein. See *Hearings on S. 1130 before the Senate Committee on Finance*, 74th Cong., 1st Sess. at 602, 603 (1935). These facts indicate that the Congress believed such termination procedures to be in harmony with the "payment when due" provisions of the Social Security Act.

Although there is no universally accepted definition of "when due," common sense tells us that "due" means that which is legal, proper, or according to law. See *Citizens National Trust and Savings Bank of Los Angeles vs. Brown*, 54 Cal. App. 2d 688 (1942).

The Court below alleges that the question of "when due" is resolved by balancing the need of the one claiming the benefits against the state's interest in protecting the Employment Security Fund. Actually, the decision misses the point that Employment Security Funds are not general revenue funds of the state, but are trust funds set aside exclusively for the payment of unemployment insurance benefits. The source of the funds is exclusively the employers of covered employment within a state and no general revenue funds are involved in paying benefits. In the State of Idaho, the amount the employer pays into the fund relates directly to his experience rating, that is, the ratio of benefits paid to the contributions the employer makes to the fund and the rate at which the

payments are made is related directly to the total balance in the Employment Security Fund. See Sections 72-1350 and 72-1351, Idaho Code. Thus, even in those cases where benefits are paid erroneously, since in most cases they cannot be recovered, the employer has a direct interest because the depletion of the fund results in his paying at a higher tax rate. This is a unique taxing situation and the state's interest therein is much more passive than in the normal taxing situation. If indeed we are to apply in these cases a weighing of interest test, then we should actually be weighing the claimant's interest against that of the employer. All state laws specifically recognize that the employer is an interested party in all proceedings effecting the paying of benefits for the amount he is required to pay in taxes is directly related to such expenditure of benefits.

It appears impossible to assert that unemployment insurance is an inherent inalienable right belonging to mankind. Certainly no such right was contemplated by the constitution or those adopting it. Any "right" one may claim to unemployment insurance, therefore, arises out of the statute creating such benefits. Recognizing the truth of this assertion, many law review articles today and other text books on unemployment insurance suggest that the constitution be amended to guarantee such rights as part of individual freedom and dignity. Unemployment insurance is based upon weekly eligibility for said benefits and is not based upon any continuing type of eligibility where once the claimant qualifies, he is forever qualified. Each week is considered a separate claim and the unemployed person must file each week for benefits and meet the eligibility requirements of the law. Therefore both the claim and the protest to the payment of claims are reasonably considered on a week-to-week basis and not in any continuum. Each time a claimant files for benefits he is filing a separate claim and must again meet the eligibility requirements.

When a claimant enters a claims office and files for benefits, the state normally takes his word concerning his eligibility, for in at least 95% of the cases the state receives accurate information and there is no protest from any employer involved. The alternative is either to pay the benefits when the claim is filed, presuming the information to be correct which it is in the vast majority of cases, or to refuse to pay any benefit claimant until the employer has had his due process of law. Certainly the latter procedure would do violence to the "when due" provisions of the Social Security Act. In the other cases where there is a protest and payments are temporarily suspended, the employer is simply allowed his opportunity to protect his property by putting in evidence to show disqualifying circumstances and, assuming that the claimant is successful in the hearing conducted as a result of the employer's protest, he is given all benefits to which he is entitled both past and future. Even though the employer prevails at the hearing he may still be required to pay at a higher tax rate in the future. The fact that the employer prevails in approximately 50% of the protests filed indicates that these protests are not frivolous but are substantial and that the right of the employers is in as much need of protection as that of the claimant. This Court has held in the past that the demands of due process do not require a hearing at the initial stage or, for that matter, at any particular stage in an administrative proceeding so long as the required hearing is held before the order becomes final depriving a person of his property. See *Opp Cotton Mills vs. The Administrator of Wage Hour Division,* 312 U.S. 126, (1941). There is nothing in the procedure employed by the states in the administration of their unemployment insurance laws that violates this due process standard. The lower court bases its argument totally upon the idea that there is such a brutal need in the claimant for such

benefits that to terminate them prior to a full evidentiary hearing is unconscionable. The due process standard should not be based upon need but upon there being held an adequate hearing before the claimant is finally, absolutely and irrevocably denied unemployment insurance. In no other manner can all interested parties receive due process. For a number of years now many decisions have been justified in the courts of this land on the basis that a dual standard has been applied regarding the opportunity of the rich and poor respectively to secure due process of law. It would indeed be a reversal of all that due process is supposed to stand for if we would now attempt to rectify what appeared to be a past evil by creating a new evil wherein the poor were automatically favored over the non-poor simply because of their economic situation.

Therefore, the proper conclusion is that benefits are due a claimant when he qualifies according to the eligibility requirements of the unemployment insurance law, and that prior to that time no property rights attach which can be invoked to require a pre-termination evidentiary hearing. See *United States vs. Northern Pacific Railroad Co.*, 256 U.S. 251, (1921). It is especially important to keep the idea in mind that in unemployment insurance not only is there a separability issue at the time of the termination of employment but there is also a continuing eligibility question which is raised on a week-to-week basis, and the eligibility issue is whether the claimant is, during each of the weeks for which he files for benefits, able, available and seeking suitable work, and that he has not failed to accept or to be referred to suitable work when directed to do so by the state. See Section 72-1366, Idaho Code. If the lower court's opinion prevails, then it would seem that benefits could not be denied pursuant to these eligibility conditions until the state had demonstrated that a claimant was not able, available and seeking suitable work in a pre-termination evidentiary hearing.

The procedures followed by the states in paying unemployment insurance benefits, including the temporary suspension of benefits while eligibility is determined, in no wise violate the directive of Section 503 (a)(1) of the Social Security Act which requires that payments be made when due, for that directive is simply an instruction to the states to determine eligibility for benefits and to pay them when eligibility has been established and not before, for it is only at that point that said benefits become due.

C. A PRE-TERMINATION HEARING IS NOT REQUIRED IN UNEMPLOYMENT INSURANCE ADMINISTRATION BECAUSE THE ELEMENT OF "BRUTAL NEED" IS NOT PRESENT.

Amicus assumes arguendo that the element of brutal need is not a necessary prerequisite to qualify for unemployment insurance. In *Goldberg v. Kelly,* supra, this Court quoted with approval the case of *Kelly v. Wyman,* 294 F. Supp. 893, 899, 900 (1968), which ruled that in the case of welfare benefits, the overpowering fact which controls is the "brutal need" of the destitute recipient and in light of this brutal need, to suspend payments without a pre-termination evidentiary hearing was unconscionable. This Court concluded that the interest of the government in protecting public tax revenues did not outweigh the requirement for a pre-termination hearing, as such a hearing was the only way to avoid condemning the recipient to suffer grievous loss. However, in the *Goldberg* case, this Court expressly recognized that some governmental benefits may be administratively terminated without a pre-termination evidentiary hearing.

Since we are assuming, for the moment at least, that the element of need is not an overpowering factor in unemployment insurance, the question must then be asked: Do the procedures employed for determining unemployment insurance eligibility meet the classic due process standards?

The elements involved in the classic due process concept are reiterated in the *Goldberg* case and are as follows: The fundamental requisite of due process of law is the opportunity to be heard; the hearing must be "at a meaningful time and in a meaningful manner;" the opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard; where important questions of fact are to be resolved due process requires an opportunit to confront and cross examine adverse witnesses; if the right to be heard did not include the right to be heard by counsel, it would be meaningless; and finally, the decision itself must rest solely upon the legal rules and evidence adduced at the hearing, all of which must have occurred before the state finally deprives claimant of his property.

The procedures provided by the employment security laws of the various states meet each of the elements of due process listed immediately above. See, for example, Sections 72-1361 and 72-1368, Idaho Code. There is, of course, no allegation that the procedures themselves are not adequate under the classic due process standards enumerated in the cases cited above. The court below alleged without foundation or support in the cases that the classic due process standard is that when a person has been found to be entitled to a government benefit, this benefit in most cases cannot be taken away without pre-termination procedures being followed. In arriving at this decision the Court cited the *Goldberg* case. The procedures enacted by the states are in fact designed to test whether the claimant is entitled to benefits for, if he is not, then there is no question of being deprived of property without due process of law. Such decision can be arrived at only if the state has had the opportunity to fully and adequately hear all interested parties which include both the claimant and the employer.

II. The Principle Announced In Goldberg v. Kelly, 397 U.S. 254 (1970) Does Not Apply To Unemployment Insurance.

A. THE FACTS OF THE GOLDBERG CASE ARE DISTINGUISHABLE FROM THOSE INVOLVED IN UNEMPLOYMENT INSURANCE ADMINISTRATION.

The crucial, factual distinctions between welfare cases and unemployment insurance cases are, first of all, that we have a third party involved in unemployment insurance matters which is an interested party in all stages of the procedure and who has as much right to constitutional due process as does the claimant and, secondly, that the statutes themselves make clear the legislative intent that unemployment insurance benefits are not considered due until the employer has been heard, and this is true even though the unemployed claimant may have drawn some initial benefits, and finally, unemployment insurance is determined on a week-to-week basis where each weekly claim is considered a new claim and the claimant is required to meet all the personal eligibility requirements of the statute.

There is an additional element that must be considered in order to do justice to the concept of unemployment insurance. Such a program is designed to aid those who are involuntarily unemployed through no fault of their own. A careful reading of the various state laws reveals that the unemployed person is deemed entitled to benefits when it can be demonstrated that the employer has unjustifiably discharged the employee. It is also designed to cover the situation where the conditions in society are such as to cause a person's separation from employment. This is for all practical purposes to assert that said benefit entitlement is conditioned upon the guilt of the employer or to societal factors beyond the control of the unemployed. These factors indicate a burden being placed upon the claimant to establish the justice of his claim and it is impossible for any governmental agency to arrive at a fair

conclusion concerning these factors unless both sides of the story are fully developed. See *Burroughs v. Employment Security Agency*, 86 Idaho 412, 387 P.2d 473 (1963).

In Welfare payments, however, there is no third party involved in the determination, the funds involved are general tax revenues, need is the sine qua non, and there are not the strict weekly eligibility requirements as in unemployment insurance.

In order to fully appreciate the situation, one must recognize that in unemployment insurance, the state's interest is considerably different than in the welfare situation. The funds involved in unemployment insurance are derived exclusively from the employers involved in the program; and those funds are considered as a trust fund, they are not mingled with other general revenue funds and can be used only for payment of unemployment insurance benefits. Since the employer is required to pay the complete amount involved in the administration of unemployment insurance, and inasmuch as, in almost all jurisdictions the employer cannot pass these expenses on to the employee, certainly due process requires that a special effort be made to insure that only eligible claimants receive said benefits. An eligible benefit claimant is the one who meets all the eligibility requirements of the law. Statistically speaking, the state is justified in paying the claimants on the basis of the initial interview and a short delay in turning over benefits to eligible claimants, whose benefits have been temporarily suspended, is not unconscionable because the element of brutal need is most often not present in unemployment insurance cases.

B. WHEREAS, NEED IS THE SINE QUA NON OF WELFARE ELIGIBILITY, IT IS NOT EVEN A CONSIDERATION IN THE DETERMINATION TO PAY UNEMPLOYMENT INSURANCE BENEFITS.

In alleging that need is not the controlling factor in unemployment insurance administration, one is of course taking the unpopular side of the argument. It is much easier to take the humanitarian approach and argue that these benefits are necessary to provide the necessities of life. But such is simply not the case. The facts are that in most cases, at least in the State of Idaho, a person drawing benefits has more annual income than do those in the state who do not draw benefits.[3]

In fact, under the law, whether a claimant has an independent source of income, and whether a spouse may be working to help raise the standard of living for the family has no bearing on his ability to draw unemployment insurance. There is nothing in the law to prevent rich or poor alike from filing for and receiving unemployment insurance benefits.

That there are those filing for unemployment insurance who are destitute goes without saying. But that this Court should announce as a constitutional principle that need should be the overpowering factor in ordering the states to conduct pre-termination hearings before temporarily suspending benefits, while another interested party is granted due process would be to ignore the legitimate due process standards

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3. During the past fiscal year, the statistics compiled by the Department of Employment, State of Idaho, indicate that the average income during the base year of claimants was $6,647.68, whereas, the average income for all persons in covered employment in the state was only $5,997.68. In addition, the statistics reflect the fact that over one-third of those drawing benefits had worked for 49 or more weeks during their base year, and that more than two-thirds of the claimants had worked for 40 or more weeks during that period.

previously announced by the Court and the fact that need is generally not a significant factor in these cases. That such a holding may require the individual to plan ahead and provide some protection for himself and his family may not be the popular position, but certainly the constitution does not require that the state insure individual citizens against their own folly. It would be contrary to all that unemployment insurance has stood for to at this time interject the standard of need as a determining factor in the administration of such laws.

III. It Is Within The Power Of This Court And A Duty Imposed Upon It To Construe A Statute So As To Avoid The Danger Of Its Unconstitutionality.

The Supreme Court has it within its power and, in fact, has a duty to declare the state statutes at issue herein constitutional as such statutes do not violate the legislative purpose announced in Section 503 (a)(1) of the Social Security Act. See *Labor Board v. Jones and Laughlin*, 301 U.S. 1, 30 (1937), *Communications Association v. Doude*, 339 U.S. 382, 407 (1950).

Only recently this Court ruled that it was not a super-legislature designed for the purpose of passing on the moral and philosophical value of the views enunciated in a statute, but rather that it was a constitutional tribunal empowered to determine the constitutionality of the statute as administratively applied, *Dandridge v. Williams*, 397 U.S. 471, 480, 481 (1970). If the statutes in question, as applied, are deemed to be violative of the due process clause then the Court has a duty if at all possible to so construe the law and to provide the states with the guidelines in applying the law so as to make it constitutional. It would seem that such guidelines would

indicate what period of time unemployment benefits could be withheld while the state gathers additional information concerning the merits of the claim without violating claimant's due process.

CONCLUSION

For the reasons stated above, the decision of the District Court granting the relief prayed for by the plaintiffs therein should be reversed.

December 4, 1970.

Respectfully submitted,

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APPENDIX

72-1368. CLAIMS FOR BENEFITS AND APPELLATE PROCEDURE.—(a) ***

(b) ***
(c) ***
(d) ***
(e) ***
(f) ***
(g) ***
(h) ***
(i) ***

(j) Benefits shall be promptly paid in accordance with a determination or redetermination except that such benefits need not be paid prior to the expiration of the period for appeal if the record with respect to the claim indicates that ineligibility has been alleged or may exist. If pursuant to a determination or redetermination benefits are payable in any amount as to which there is no dispute, such amount of benefits shall be promptly paid regardless of any redetermination or appeal. If a determination or redetermination allowing benefits is affirmed in any amount by an appeals examiner, or is so affirmed by the board, or if a decision of the appeals examiner allowing benefits is affirmed in any amount by the board, such benefits shall be promptly paid regardless of any claim for review or further appeal, and no injunction, supersedeas, stay, or other writ or process suspending the payment of such benefits shall be issued by the board or any court but if such decision is finally reversed benefits shall not be paid for any subsequent weeks of unemployment involved in such reversal.

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ARTICLE III — BENEFIT REGULATIONS

5. VALID CLAIM. — A valid claim may be canceled at the discretion of the Director if it is found that the claim was established as a result of erroneous information furnished the claimant by the Department.